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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 10/631,115

Filing Date: July 31, 2003

Appellant(s): MICHEL ET AL.

\_\_\_\_\_  
Elizabeth Ruzich  
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed 11/25/2008 appealing from the Office action mailed 11/21/2007.

**(1) Real Party in Interest**

A statement identifying by name the real party in interest is contained in the brief.

**(2) Related Appeals and Interferences**

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**(3) Status of Claims**

The statement of the status of claims contained in the brief is correct.

**(4) Status of Amendments After Final**

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

**(5) Summary of Claimed Subject Matter**

The summary of claimed subject matter contained in the brief is correct.

**(6) Grounds of Rejection to be Reviewed on Appeal**

The appellant's statement of the grounds of rejection to be reviewed on appeal is substantially correct. The changes are as follows:

Claims 10-12 and 28-29 are rejected under 35 U.S.C 102(e) as being anticipated by Jackelen et al. (US Publication Number 2003/0053810, now USPN 6,823,147).

Claims 13-15 and 18-26 are rejected under 35 U.S.C 103(a) as being unpatentable over Jackelen et al. (US Publication Number 2003/0053810 A1) as applied to claim 10 above, and further in view of Behlok (USPN 6,469,805 B1).

Claims 16 and 17 are rejected under 35 U.S.C 103(a) as being unpatentable over Jackelen et al. (US Publication Number 2003/0053810 A1) as applied to claim 10 above, and further in view of Tai (USPN 5,606,649).

Claims 30-33 are rejected under 35 U.S.C 103(a) as being unpatentable over Jackelen et al. (US Publication Number 2003/0053810 A1) as applied to claim 10 above, and further in view of Hirumi (USPN 6,059,469).

Please see "New Grounds of Rejection" in section (9).

#### **(7) Claims Appendix**

The copy of the appealed claims contained in the Appendix to the brief is correct.

#### **(8) Evidence Relied Upon**

6,823,147	Jackelen et al.	11-2004
6,469,805 B1	Behlok	10-2002
5,606,649	Tai	02-1997
6,059,469	Hirumi	05-2000

#### **(9) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

#### **NEW GROUND(S) OF REJECTION**

#### ***Claim Rejections - 35 USC § 101***

Claims 10-26 and 28-33 are rejected under 35 U.S.C. 101 as not falling within one of the four statutory categories of invention. Supreme Court precedent *Diamond v. Diehr*, 450 U.S. 175, 184 (1981); *Parker v. Flook*, 437 U.S. 584, 588 n.9 (1978); *Gottschalk v. Benson*, 409 U.S. 63, 70 (1972); *Cochrane v. Deener*, 94 U.S. 780, 787-88 (1876) and recent Federal Circuit decisions *In re Bilski*, 88 USPQ2d 1385 (Fed. Cir. 2008) indicate that a statutory "process" under 35 U.S.C. 101 must (1) be tied to another statutory category (such as a particular apparatus), or (2) transform underlying subject matter (such as an article or material) to a different state or thing. While the instant claim(s) recite a series of steps/methods or acts to be performed, the claim(s) neither transform underlying subject matter nor positively tie to another statutory category that accomplishes the claimed method steps, and therefore do not qualify as a statutory process.

a. Considering claim 10, claim 10 does not 1) explicitly recite a machine that accomplishes the claimed steps, and 2) none of the steps in the claim would "have to" (inherently) be performed by a machine. Thus, claim 10 is not a statutory process because it neither ties to another statutory category nor transforms the underlying subject matter to a different state or thing.

Claims 11-31 are rejected under 35 U.S.C. 101 for the same reason explained above for claim 10.

a. Considering claim 32, claim 32 recites a display device. Thus, it appears to meet the "tie to another statutory category" requirement. However, such

limitation does not provide meaningful limits on the method claim's scope. This is an insignificant post solution activity which does not render the ineligible method claim 32 into a statutory process.

b. Claim 33 may inherently tie to a machine to perform the printing process. However, this printing step is also an insignificant post solution activity which does not provide meaningful limits on the method claim's scope. For the same reason discussed in claim 32, claim 33 is not a statutory process.

Claims 10-12 and 28-29 are rejected under 35 U.S.C 102(e) as being anticipated by Jackelen et al. (US Publication Number 2003/0053810, now USPN 6,823,147).

Regarding claim 10: As shown in figures 1-2, Jackelen et al. discloses a method for analyzing a print job comprising an object having an associated print attribute **(column 4, lines 1-3; note that a method of receiving a print job from a network and the print job header is parsed and the print job attributes are determined. Also, see column 2, lines 36-38; note that the print job is has individual page to be printed i.e. considered as an object)**, the method comprising:

determining a print attribute of interest **(column 4, line 3; note that the attributes of the print job are determined. Also, see the attributes of interest being font, color and alike stated in column 2, lines 31-33);**

associating a corresponding unique marker to the determined attribute **(column 4, lines 4-7; note that the unique marker is considered as the resources and**

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**capabilities of the printer i.e. printer attributes as it is being associated with the print job attributes);**

receiving page description language (“PDL”) commands that describe the print job (**column 2, lines 27-29; note that the print job is described in a PDL format.**

**Also see column 4, line 1, the print job is received from the network i.e. in PDL format)**

interpreting the PDL commands to process the object (**column 2, lines 30-31; note that the PDL format is includes the job attributes that is in the page of the print job. Also, see that the objects i.e. page of the print job is a single page as explained in line 38);**

determining if the attribute associated with the processed object matches the determined attribute (**column 4, lines 15-20; note that the an affirmative response is received on the inquires of each page i.e. object based on the match and mismatch existing in the attribute i.e. resources and capabilities of the printer);**  
and

reporting the results of any matched object using the corresponding unique marker (**column 4, lines 20-23; note that if no mismatch is detected i.e. when the attributes and capabilities match, the page i.e. object is sent to the marking engine for printing).**

Regarding claim 11: Jackelen et al. further disclose, the method of claim 10, wherein the PDL commands comprise PostScript commands (**column 2, lines 29-30; note that PostScript format is disclosed**).

Regarding claim 12: Jackelen et al. further disclose, the method of claim 10, wherein the PDL commands comprise PCL commands (**column 2, line 30; note that PCL format is disclosed**).

Regarding claim 28: Jackelen et al. further disclose, the method of claim 10, wherein the determined print attribute of interest comprises an orientation (**column 1, lines 38-40; note that the one of the attribute is the print media and the correct size and finishing i.e. orientation**).

Regarding claim 29: Jackelen et al. further disclose, the method of claim 10, wherein the unique marker comprises text (**column 4, lines 24-26; note that the unique marker is considered as the printer with the resources and capabilities and the printing is executed i.e. printing text is inherent**).

Claims 13-15 and 18-26 are rejected under 35 U.S.C 103(a) as being unpatentable over Jackelen et al. (US Publication Number 2003/0053810 A1) as applied to claim 10 above, and further in view of Behlok (USPN 6,469,805 B1).

Regarding claim 13: Jackelen et al. disclose all of the subject matter as described as above except for teaching wherein the object comprises text.

However, Behlok teaches wherein the object comprises text, an image and graphic (**column 5, lines 11-13; note that the PDL files includes images, text data and graphic data**).

Jackelen et al. and Behlok are combinable because they are from the same class and field of endeavor i.e. data processing for printing. At the time of the invention, it would have been obvious to a person of ordinary skill in the art to combine the two references because PDL files includes different forms of data. The suggestion/motivation for doing so would have been in order to obtain a method that is versatile and flexible for processing a print job. Therefore, it would have been obvious to combine Jackelen et al. with Behlok to obtain the invention as specified in claim 13.

Regarding claim 14: Jackelen et al. disclose all of the subject matter as described as above except for teaching wherein the object comprises an image.

However, Behlok teaches wherein the object comprises text, an image and graphic (**column 5, lines 11-13; note that the PDL files includes images, text data and graphic data**).

Jackelen et al. and Behlok are combinable because they are from the same class and field of endeavor i.e. data processing for printing. At the time of the invention, it would have been obvious to a person of ordinary skill in the art to combine the two references because PDL files includes different forms of data. The



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suggestion/motivation for doing so would have been in order to obtain a method that is versatile and flexible for processing a print job. Therefore, it would have been obvious to combine Jackelen et al. with Behlok to obtain the invention as specified in claim 14.

Regarding claim 15: Jackelen et al. disclose all of the subject matter as described as above except for teaching wherein the object comprises graphic.

However, Behlok teaches wherein the object comprises text, an image and graphic (**column 5, lines 11-13; note that the PDL files includes images, text data and graphic data**).

Jackelen et al. and Behlok are combinable because they are from the same class and field of endeavor i.e. data processing for printing. At the time of the invention, it would have been obvious to a person of ordinary skill in the art to combine the two references because PDL files includes different forms of data. The suggestion/motivation for doing so would have been in order to obtain a method that is versatile and flexible for processing a print job. Therefore, it would have been obvious to combine Jackelen et al. with Behlok to obtain the invention as specified in claim 15.

Regarding claim 18: Jackelen et al. disclose all of the subject matter as described as above except for wherein the determined print attribute of interest comprises a color space.

However, Behlok discloses wherein the determined print attribute of interest comprises a color space (**column 1, lines 30-36; note that color space is disclosed**).

Jackelen et al. and Behlok are combinable because they are from the same class and filed of endeavor i.e. data processing for printing. At the time of the invention, it would have been obvious to a person of ordinary skill in the art at to combine the two references because in digital color imaging, RGB and CMYK have the array of pixel information for each of the imaging colors. The suggestion/motivation for doing so would have been in order to acquire a versatile and flexible method when analyzing the color space. Therefore, it would have been obvious to combine Jackelen et al. and Behlok to obtain the invention as specified in claim 18.

Regarding claim 19: Jackelen et al. disclose all of the subject matter as described as above except for wherein the determined print attribute of interest comprises a red, green, blue color space.

However, Behlok discloses wherein the determined print attribute of interest comprises a red, green, blue color space (**column 1, lines 30-36; note that RGB is disclosed**).

Jackelen et al. and Behlok are combinable because they are from the same class and filed of endeavor i.e. data processing for printing. At the time of the invention, it would have been obvious to a person of ordinary skill in the art at to combine the two references because in digital color imaging, RGB and CMYK have the array of pixel information for each of the imaging colors. The suggestion/motivation for doing so would have been in order to acquire a versatile and flexible method when analyzing the color

space. Therefore, it would have been obvious to combine Jackelen et al. and Behlok to obtain the invention as specified in claim 19.

Regarding claim 20: Jackelen et al. disclose all of the subject matter as described as above except for wherein the determined print attribute of interest comprises a cyan, magenta, yellow color space.

However, Behlok discloses wherein the determined print attribute of interest comprises a cyan, magenta, yellow color space (**column 1, lines 30-36; note that CMYK is disclosed**).

Jackelen et al. and Behlok are combinable because they are from the same class and filed of endeavor i.e. data processing for printing. At the time of the invention, it would have been obvious to a person of ordinary skill in the art at to combine the two references because in digital color imaging, RGB and CMYK have the array of pixel information for each of the imaging colors. The suggestion/motivation for doing so would have been in order to acquire a versatile and flexible method when analyzing the color space. Therefore, it would have been obvious to combine Jackelen et al. and Behlok to obtain the invention as specified in claim 20.

Regarding claim 21: Jackelen et al. disclose all of the subject matter as described as above except for wherein the color space comprises a device-dependent color space.

However, Behlok discloses wherein the color space comprises a device-dependent color space (**column 1, lines 44-48; column 1, lines 50-55; note that typically the half toner renders a raster image for the print colors**).

Jackelen et al. and Behlok are combinable because they are from the same class and filed of endeavor. At the time of the invention, it would have been obvious to a person of ordinary skill in the art at wherein the color space comprises a device-dependent color space. The suggestion/motivation for doing so would have been would have been in order to efficiently process the color space so that the print quality would be enhanced. Therefore, it would have been obvious to combine Jackelen et al. and Behlok to obtain the invention as specified in claims 21.

Regarding claim 22: Jackelen et al. disclose all of the subject matter as described as above except for wherein the color space comprises a device-independent color space.

However, Behlok discloses wherein the color space comprises a device-independent color space (**column 1, lines 44-48; column 1, lines 50-55; note that typically the half toner renders a raster image for the print colors, however a multidimensional look-up table is commonly used before the printer received the color values**).

Jackelen et al. and Behlok are combinable because they are from the same class and filed of endeavor. At the time of the invention, it would have been obvious to a person of ordinary skill in the art wherein the color space comprises a device-

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independent color space. The suggestion/motivation for doing so would have been in order to efficiently process the color so that the print quality would be enhanced.

Therefore, it would have been obvious to combine Jackelen et al. and Behlok to obtain the invention as specified in claim 22.

Regarding claim 23: Jackelen et al. disclose all of the subject matter as described as above except for teaching wherein the determined print attribute of interest comprises a color value.

However, Behlok discloses a method wherein the determined print attribute of interest comprises a color value (**column 1, lines 30-36; note that the different color space is disclosed**).

Jackelen et al. and Behlok are combinable because they are from the same class and filed of endeavor. At the time of the invention, it would have been obvious to a person of ordinary skill in the art at to combine the two references because in digital color imaging, RGB and CMYK have the array of pixel information for each of the imaging colors. The suggestion/motivation for doing so would have been that is versatile and efficient. Therefore, it would have been obvious to combine Jackelen et al. and Behlok to obtain the invention as specified in claim 23.

Regarding claim 24: Jackelen et al. disclose all of the subject matter as described as above except for teaching wherein the determined print attribute of interest comprises a red, green, blue color value.

However, Behlok discloses a method wherein the determined print attribute of interest comprises a red, green, blue color value (**column 1, lines 30-36; note that the different color space is disclosed**).

Jackelen et al. and Behlok are combinable because they are from the same class and filed of endeavor. At the time of the invention, it would have been obvious to a person of ordinary skill in the art at to combine the two references because in digital color imaging, RGB and CMYK have the array of pixel information for each of the imaging colors. The suggestion/motivation for doing so would have been in order to acquire a versatile and flexible method when analyzing the color space. Therefore, it would have been obvious to combine Jackelen et al. and Behlok to obtain the invention as specified in claim 24.

Regarding claim 25: Jackelen et al. disclose all of the subject matter as described as above except for teaching wherein the determined print attribute of interest comprises a color value, a red, green, blue color value, a cyan, magenta, yellow color value.

However, Behlok discloses a method wherein the determined print attribute of interest comprises a color value, a red, green, blue color value and a cyan, magenta, yellow color value (**column 1, lines 30-36; note that the different color space is disclosed**).

Jackelen et al. and Behlok are combinable because they are from the same class and filed of endeavor. At the time of the invention, it would have been obvious to a

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person of ordinary skill in the art at to combine the two references because in digital color imaging, RGB and CMYK have the array of pixel information for each of the imaging colors. The suggestion/motivation for doing so would have been in order to acquire a versatile and flexible method when analyzing the color space. Therefore, it would have been obvious to combine Jackelen et al. and Behlok to obtain the invention as specified in claim 25.

Regarding claim 26: Jackelen et al. disclose all of the subject matter as described as above except for teaching wherein the color value comprises a spot color value.

However, Behlok discloses a method wherein the color value comprises a spot color value (**column 7, lines 40-44; note that pantone spot color is considered as the ink dot of a particular process color on a sheet of paper**).

Jackelen et al. and Behlok are combinable because they are from the same class and filed of endeavor. At the time of the invention, it would have been obvious to a person of ordinary skill in the art wherein the color value comprises a spot color value because when analyzing an ink dot of a particular process color on a sheet of paper is a derivation of a spot color value. The suggestion/motivation for doing so would have been in order to acquire a versatile and flexible method when analyzing the color space. Therefore, it would have been obvious to combine Jackelen et al. and Behlok to obtain the invention as specified in claim 26.

Claims 16 and 17 are rejected under 35 U.S.C 103(a) as being unpatentable over Jackelen et al. (US Publication Number 2003/0053810 A1) as applied to claim 10 above, and further in view of Tai (USPN 5,606,649).

Regarding claim 16: Jackelen et al. disclose all of the subject matter as described as above except for teaching wherein the determined print attribute of interest comprises a font name.

However, Tai disclose wherein the determined print attribute of interest comprises a font name (**column 5, lines 6-14; note that each PDL data includes font related data i.e. font type**).

Jackelen et al. and Tai are combinable because they are from they are from the same field of endeavor. At the time of the invention, it would have been obvious to a person of ordinary skill in the art wherein the determined print attribute of interest comprises a font name. The suggestion/motivation for doing so would have been that it is efficient enough in order to permit accurate reconstruction of the original document even though the text characters would have different sizes and fonts (column 5, lines 15-17). Therefore, it would have been obvious to combine Jackelen et al. with Tai to obtain the invention as specified in clam 16.

Regarding claim 17: Jackelen et al. disclose all of the subject matter as described as above except for teaching wherein the determined print attribute of interest comprises a font size.



However, Tai disclose wherein the determined print attribute of interest comprises a font size (**column 5, lines 6-14; note that each PDL data includes font related data i.e. font size**).

Jackelen et al. and Tai are combinable because they are from they are from the same field of endeavor. At the time of the invention, it would have been obvious to a person of ordinary skill in the art wherein the determined print attribute of interest comprises a font size. The suggestion/motivation for doing so would have been that it is efficient enough in order to permit accurate reconstruction of the original document even though the text characters would have different sizes and fonts (column 5, lines 15-17). Therefore, it would have been obvious to combine Jackelen et al. with Tai to obtain the invention as specified in clam 17.

Claims 30-33 are rejected under 35 U.S.C 103(a) as being unpatentable over Jackelen et al. (US Publication Number 2003/0053810 A1) as applied to claim 10 above, and further in view of Hirumi (USPN 6,059,469).

Regarding claim 30: Jackelen et al. disclose all of the subject matter as described as above except for teaching wherein the unique marker comprises sound.

However, Hirumi teaches wherein the unique marker comprises sound (**column 13, lines 32-38; note that a buzzer is comprised in the printing device**).

Jackelen et al. and Hirumi combinable because they are from the same filed of endeavor. At the time of the invention, it would have been obvious to a person of

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ordinary skill in the art to wherein the unique marker comprises sound. The suggestion/motivation for doing so would have been in order to efficiently inform user. Therefore, it would have been obvious to combine Jackelen et al. with Hirumi to obtain the invention as specified in claim 30.

Regarding claim 31: Jackelen et al. disclose all of the subject matter as described as above except for teaching wherein the unique marker comprises changing the color of the matched object.

However, Hirumi teaches wherein the unique marker comprises changing the color of the matched object (**column 1, lines 50-55; note that the color is changed to balance the density of the printed character**).

Jackelen et al. and Hirumi combinable because they are from the same filed of endeavor. At the time of the invention, it would have been obvious to a person of ordinary skill in the art wherein the unique marker comprises changing the color of the matched object. The suggestion/motivation for doing so would have been that it is reliable to have a sound and color method when there is mismatch object in printing. Therefore, it would have been obvious to combine Jackelen et al. with Hirumi to obtain the invention as specified in claim 31.

Regarding claim 32: Jackelen et al. disclose all of the subject matter as described as above except for teaching wherein reporting comprises displaying the matched object on a display device in the changed color.

However, Hirumi teaches wherein reporting comprises displaying the matched object on a display device in the changed color (**column 13, lines 35-36; note that a display LCD is disclosed**).

Jackelen et al. and Hirumi combinable because they are from the same filed of endeavor. At the time of the invention, it would have been obvious to a person of ordinary skill in the art wherein reporting comprises displaying the matched object on a display device in the changed color. The suggestion/motivation for doing so would have been in order to obtain a reliable and visual assessment of the print job. Therefore, it would have been obvious to combine Jackelen et al. with Hirumi to obtain the invention as specified in claim 32.

Regarding claim 33: Jackelen et al. further disclose, the method of claim 31, wherein reporting comprises printing the matched object in the changed color (**column 4, lines 23-26; note that the matched print job is printed**).

#### **(10) Response to Argument**

(a) Appellant, on page 11, argues that “unlike Jackelen, the invention as claimed is concerned with analyzing objects within a print job and identifying the attributes of objects (§ 2, lines 1-2)”

**In response:** Appellant’s assertions are incorrect. As described in claim 10, the application only states “an object” in stead of the “plurality of objects as stated in the argument”. Per the Applicant’s specification, an object is a singular object out of pages,

text, images, and graphics see page 8, lines 20-22. Thus, the claimed subject matter implies a single object instead of a plurality of objects that include such things as pages, text, images and graphics. Thus, the stated argument is not persuasive.

(b) Appellant, on page 11, ¶ 2, lines 10-11, argues that “nowhere in the art of record is there any discussion of identifying print attributes and associating markers therewith”.

**In response:** Appellant’s assertions are incorrect. As described in Jackelen, determining a print attribute of interest (column 4, line 3; note that the attributes of the print job are determined. Also, see the attributes of interest being font, color and alike stated in column 2, lines 31-33) and associating a corresponding unique marker to the determined attribute (column 4, lines 4-7; note that the unique marker is considered as the resources and capabilities of the printer i.e. printer attributes as it is being associated with the print job attributes). Note that in applicant's specification, the unique marker is defined as follows. *The unique marker may be any type of identification that may be used to identify the presence of an object associated with a predetermined attribute in the print job (page 10, lines 3-4).* As explained in the reference and in argument (a), the claim calls for a single object which could be a page, image, text or graphics. Therefore, Jackelen discloses the stated argument.

(c) Appellant, on page 11, ¶ 2, lines 11-14, that “nor is there any indication in the art of record that PDL commands in a print job are interpreted in connection with an object, nor that a determination is made if an attribute associated with an object matches an attribute”

**In response:** Appellant’s assertions are incorrect. As described in Jackelen, interpreting the PDL commands to process the object (column 2, lines 30-31; note that the PDL format includes the job attributes that is in the page of the print job. Also, see that the objects i.e. page of the print job is a single page as explained in line 38); determining if the attribute associated with the processed object matches the determined attribute (column 4, lines 15-20; note that the an affirmative response is received on the inquires of each page i.e. object based on the match and mismatch existing in the attribute i.e. resources and capabilities of the printer). Note that, in accordance with the claim language, an object is considered as the page that is with in the print job, see column 2, line 38. It is also clear that object per applicant's specification is stated as a page, since it is not a plurality of objects which would have been including what is stated in the specification on page 8, lines 20-22. Therefore, Jackelen discloses the stated argument.

(d) Appellant, on page 12, ¶ 1, argues that “the claimed invention is concerned with a print job comprising many objects, each of which has a determined attributes, as identified by a unique marker”

**In response:** Appellant's assertions are incorrect. As also explained above in argument (a), the print job as claimed in claim 10, does not disclose a plurality of objects instead it only calls for an object. Thus, the stated argument is not persuasive.

(e) Appellant, on page 13, argues that "Jackelen is not concerned with a print job comprising object having an associated print attribute and there is no notation of an object in Jackelen".

**In response:** Appellant's assertions are incorrect. Jackelen disclosed a method for analyzing a print job comprising an object having an associated print attribute (column 4, lines 1-3; note that a method of receiving a print job from a network and the print job header is parsed and the print job attributes are determined. Also, see column 2, lines 36-38; note that the print job is has individual page to be printed i.e. considered as an object). Also, the page of the print job is considered as the object in Jackelen. Therefore, the stated argument is disclosed in Jackelen.

(f) Appellant, on page 13, argues the same feature as argument described above in (b).

(g) Appellant, on page 15, argues about "reporting the results of any matched objects using the corresponding unique marker."

**In response:** Appellant's assertions are incorrect. Jackelen disclosed reporting the results of any matched object using the corresponding unique marker (column 4, lines 20-23; note that if no mismatch is detected i.e. when the attributes and capabilities match, the page i.e. object is sent to the marking engine for printing). Therefore, the stated argument is disclosed in Jackelen.

### **(11) Related Proceeding(s) Appendix**

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

This examiner's answer contains a new ground of rejection set forth in section **(9)** above. Accordingly, appellant must within **TWO MONTHS** from the date of this answer exercise one of the following two options to avoid *sua sponte* **dismissal of the appeal** as to the claims subject to the new ground of rejection:

**(1) Reopen prosecution.** Request that prosecution be reopened before the primary examiner by filing a reply under 37 CFR 1.111 with or without amendment, affidavit or other evidence. Any amendment, affidavit or other evidence must be relevant to the new grounds of rejection. A request that complies with 37 CFR 41.39(b)(1) will be entered and considered. Any request that prosecution be reopened will be treated as a request to withdraw the appeal.

**(2) Maintain appeal.** Request that the appeal be maintained by filing a reply brief as set forth in 37 CFR 41.41. Such a reply brief must address each new ground of

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rejection as set forth in 37 CFR 41.37(c)(1)(vii) and should be in compliance with the other requirements of 37 CFR 41.37(c). If a reply brief filed pursuant to 37 CFR 41.39(b)(2) is accompanied by any amendment, affidavit or other evidence, it shall be treated as a request that prosecution be reopened before the primary examiner under 37 CFR 41.39(b)(1).

Extensions of time under 37 CFR 1.136(a) are not applicable to the TWO MONTH time period set forth above. See 37 CFR 1.136(b) for extensions of time to reply for patent applications and 37 CFR 1.550(c) for extensions of time to reply for ex parte reexamination proceedings.

Respectfully submitted,

/Hilina S Kassa/

Examiner, Art Unit 2625

March 23, 2009

**A Technology Center Director or designee must personally approve the new ground(s) of rejection set forth in section (9) above by signing below:**

/Ulka Chauhan/  
Acting Director, Technology Center 2600

Conferees:

/King Y. Poon/  
Supervisory Patent Examiner, Art Unit 2625

/David K Moore/  
Supervisory Patent Examiner, Art Unit 2625



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